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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 BONVIVINO CAPITAL LLC,

12 Plaintiff,

13 v.

14 MORGAN CLENDENEN; COLD
15 HEAVEN CELLARS, LLC; and DOES 1–
16 50,

Defendants.

Case No. 2:12-cv-08185-ODW(FFMx)

**ORDER DENYING EX PARTE
APPLICATION [66]**

17 Defendants now seek ex parte relief from the Court to exclude the testimony of
18 Bonvivino Capital, LLC’s expert witness John A. Hinman. (ECF No. 66.) They
19 argue that Bonvivino designated Hinman as an expert witness on July 3, 2013—three
20 months after the March 18, 2013 expert-disclosure deadline.

21 Though Defendants’ assertions may be true, their window for filing motions has
22 passed; the last day for hearing motions was June 24, 2013. (ECF No. 12.) The relief
23 they seek should be addressed in a motion in limine.


24 Further, a party seeking ex parte relief must establish that it “is without fault in
25 creating the crisis that requires ex parte relief, or that the crisis occurred as a result of
26 excusable neglect.” *Mission Power Eng’g Co. v. Cont’l Casualty Co.*, 883 F. Supp.
27 488, 492 (C.D. Cal. 1995). Upon review of the record, it appears that Defendants
28 delayed production of discovery, albeit in protest to overbroad discovery requests.

1 And though Bonvivino cannot be said to be without fault in causing that delay,
2 Defendants cannot establish that they are “without fault in creating the crisis.” *Id.*
3 at 492.

4 Therefore, Defendants’ Ex Parte Application is **DENIED**. Defendants may
5 raise this issue in a motion in limine, appropriately filed in accordance with the
6 Court’s Scheduling and Case Management Order. (ECF No. 12.)

7 **IT IS SO ORDERED.**

8
9 July 9, 2013

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12 **OTIS D. WRIGHT, II**
13 **UNITED STATES DISTRICT JUDGE**
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